

This letter discusses how sales of food can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

August 2, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 25, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am researching the taxability of food sold by supermarkets and delicatessens, and I would like to know when foods may be taxed at the reduced sales tax rate (assuming that the nature of the business is such that it may sell low rate foods).

My understanding of Regulation 130.310 is that food is taxable at the full rate, if it is (1) food for immediate or on premises consumption, (2) individual servings or (3) hot. How does Illinois define 'immediate consumption'?

I have read numerous letters on the Illinois Department of Revenue website and while many say that cold sandwiches are taxable at the full rate because they are for immediate consumption, ST 8800448 and ST 94-0284 state that cold sandwiches are low rate items (under certain circumstances.) Is this correct?

If something is generally served heated but is sold cold (a quart of chicken soup sold from the refrigerated case, for example) is it for immediate consumption? What about food that is sold cold and can be eaten cold, such as a roast chicken?

Are deli or party platters considered to be for immediate consumption? By deli platter I mean a multiple serving tray of assorted sliced meats, cheeses, vegetables, fruits or small sandwiches. This is not the kind of thing someone picks up at the deli and eats on

the way home, although they may serve it as soon as they get home. How 'immediate' does consumption have to be to be taxed at the full rate?

How does retailer-prepared play into this? If something is prepared by the retailer but is not for immediate or on premises consumption, is not in an individual size and is not hot, is it still full rate 'prepared'?

I can be reached at #.

Thank you in advance for your assistance.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. Please note that the Department is currently reviewing this regulation and may propose changes to it. Consequently, we advise you to watch our website for rulemaking developments.

As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See Section 130.310(b)(1).

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold. See, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by *the retailer* so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales were for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by *the retailer* for immediate consumption, soft drinks and alcoholic beverages).

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.